

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEBRASKA

In Re:	)	Case No. 11-81841-TLS
	)	
RAYMOND RUSSELL ROBERTS and	)	
LORELLE LEA CARR	)	EXPEDITED MOTION FOR RELIEF
	)	FROM AUTOMATIC STAY
Debtors.	)	

COMES NOW Northwest Bank, a secured creditor of the above-referenced Debtors, by and through its attorney, to file this Expedited Motion for Relief from Automatic Stay (the "Motion") and, in support thereof, respectfully represents to this Court as follows:

**I. JURISDICTION**

This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§157 and 1334, 11 U.S.C. §§361 and 362 and Bankruptcy Rules Numbers 4001 and 9013.

The above-named Debtors filed a Bankruptcy Petition in this Court on or about July 18, 2011.

**II. BACKGROUND**

Debtors are the sole owners and operators of Coloredair Art, Inc. d/b/a CAPS, Etc. (the "Business").

**III. DEBT AND SECURITY**

On July 7, 2010, the Debtors and the Business executed and delivered to Northwest Bank (the "Bank") a Commercial Loan Agreement and Promissory Note in the amount of \$150,000, together with interest as more particularly specified in the Commercial Loan Agreement and Promissory Note. The Bank loaned \$150,000 to the Debtors and the Business (the "Loan").

The Loan is secured by a Security Agreement dated July 7, 2010, and a Financing Statement dated July 7, 2010, under which the Debtors and the Business granted to the Bank a

Security Interest in the inventory, customer lists, intangible business property and equipment of the Business (“Assets”), along with accounts receivables and depository accounts of the Business.

On or about July 7, 2011, and prior to filing their Petition in Bankruptcy, the Debtors, acting on behalf of the Business, delivered to the Bank possession of the Assets (identified on Exhibit “A” to the Motion and incorporated herein by reference).

The Assets were listed as property of the Debtors on Schedule B of the Bankruptcy Petition with the following notation:

“Subject to lien by Northwest Bank also secured by Homestead. – Surrender.”

The debts outstanding on the Loan, including principal and accrued interest, total \$150,994.53, and far exceed the value of the Assets.

The Business ceased operation prior to surrender of the Assets to the Bank.

#### **IV. SPECIAL CIRCUMSTANCES**

The Bank has determined that the maximum value of the Assets can be obtained through a sale of all of the assets to a single buyer, allowing such buyer to essentially take over the operations of the Business under a different name.

The value of the Assets, as a part of such sale, diminishes rapidly over time as the market position of the Business recedes.

The Bank has found a purchaser for the Assets (the “Buyer”) for the purchase price of \$41,000. The purchase price is representative of the fair market value of the Assets.

The Buyer’s willingness to close under the purchase agreement is contingent upon the timely ability of the Bank to convey the Assets.

The Debtors have disclaimed any equity in the Assets through communications between counsel for the Debtors and counsel for the Bank, as further noted by the delivery of the Assets to the Bank prior to filing Debtor's Petition and the notation of "Surrender" in listing the Assets in Schedule B of the Petition.

The trustee in bankruptcy has indicated that there are no assets available for distribution in this case (Document No. 7, Chapter 7 Trustee's Report of No Distribution). Furthermore, Trustee has, through communications with counsel for the Bank, indicated that the Trustee asserts no right or claim in the assets on behalf of the estate or any other creditor thereof.

#### **V. RELIEF REQUESTED**

The Assets are to be sold pursuant to Nebraska State Law under the Uniform Commercial Code. The estate has no equity in the Assets and the Bank holds the first and only lien on the Assets.

By this motion, the Bank requests that the Court terminate the automatic stay pursuant to §362(d)(1) and/or (d)(2) of the Bankruptcy Code as to the Assets in order to allow the Bank to exercise its state law remedies as to the Assets, including, but not limited to, sale of the Assets to the Buyer.

The value of the Assets is diminishing rapidly as time passes from the closure of the Business. Furthermore, the condition of the Assets – particularly, the production equipment – continues to degrade as the Assets are stored without service. Given the exigent circumstances, together with the cooperation of the Debtors and the Trustee, the Bank maintains that sufficient cause exists to waive the ten day stay provided in Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure, and the Bank requests that the Court waive such stay.

## VI. CONCLUSION

The Bank requests the Court to (a) waive the ten day stay provided in Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure; (b) immediately terminate the automatic stay pursuant to §362(d)(1) and/or(d)(2) of the Bankruptcy Code as to the Assets to allow the Bank to exercise its state law remedy as to the Assets, including, but not limited to, sale of the Assets under the Agreement with Buyer; and (c) grant the Bank such other further relief, general or specific, at law or equity, to which the Bank may show itself justly entitled.

Dated this 21<sup>st</sup> day of October, 2011.

NORTHWEST BANK, Secured Creditor

By: David A. Christensen #19196  
Howard N. Epstein, #21173  
David A. Christensen, #19196  
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Attorneys for Northwest Bank, Secured Creditor

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was e-mailed via the CM/ECF system this 21<sup>st</sup> day of October, 2011, to all parties who filed an appearance by electronic filing in this case:

Broder  
6 Neshaminy Interplex, 6 Floor  
Feasterville Trevose, PA 19053

Capital One Bank (USA) N.A.  
P.O. Box 30281  
Salt Lake City, UT 84130-0281

California State Disbursement Unit  
Child Support Enforcement  
P.O. Box 989067  
West Sacramento, CA 95798-9067

Capital One Bank (USA), N.A.  
P.O. Box 60599  
City Of Industry, CA 91716-0599

Lorelle Lea Carr  
16016 Fowler Ave.  
Omaha, NE 68116-3237

Citimortgage  
P.O. Box 660065  
Dallas, TX 75266-0065

Citimortgage Inc  
P.O. Box 689196  
Des Moines, IA 50368-9196

Coloredair Art, Inc. dba CAPS ETC.  
c/o Raymond Roberts & Lorelle Carr  
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Omaha, NE 68116-3237

County of San Bernardino  
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Loma Linda, CA 92354-2030

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Douglas County Treasurer  
Attn: Property Division  
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Omaha, NE 68183-0003

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Patricia Fahey  
U.S. Trustee's Office  
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Omaha, NE 68102-1321

Grownup Sales, Inc.  
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Omaha, NE 68135-1112

Imprints Wholesale  
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Denver, CO 80238-5001

Richard D. Myers  
Chapter 7 Trustee  
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Navy Federal Credit Union  
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Spencer, IA 51301-3821

Qwest  
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Seattle, WA 98111-9254

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SanMar  
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Cincinnati, OH 45264-3693

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Small Business Administration  
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Atlanta, GA 30374-0192

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Omaha, NE 68102

Douglas County Treasurer  
909 Civic Center,  
1819 Farnam St.  
Omaha, NE 68183-0001

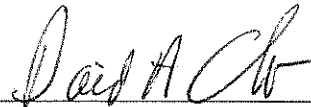
Eric H. Lindquist  
Eric H. Lindquist, P.C., L.L.O  
8712 West Dodge Rd, #260  
Omaha, NE 68114-3419

Navy Federal Credit Union  
P.O. Box 3000  
Merrifield, VA 22119-3000

Recovery Management Systems Corporation  
25 SE 2nd Ave Ste 1120  
Miami, FL 33131-1605

Recovery Management Systems Corporation  
25 S.E. 2nd Avenue, Suite 1120  
Miami, FL 33131-1605

SAC Federal Credit Union  
Box 1149 P.O. Box 13007  
Bellevue, NE 68005-1149



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David A. Christensen

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B6B (Official Form 6B) (12/07) - Cont.

In re **Raymond Russell Roberts,  
Lorelle Lea Carr**

Case No. \_\_\_\_\_

Debtors

**SCHEDULE B - PERSONAL PROPERTY**  
(Continuation Sheet)

Type of Property	N O N E	Description and Location of Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption
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- |  |  |   |           |
|--|--|---|-----------|
| 28. Office equipment, furnishings, and supplies.                   | Miscellaneous Office Equipment, Furnishings and Supplies - Subject to lien by Northwestern Bank  | J | 500.00    |
|  | Fixtures - Subject to lien by Northwestern Bank  | J | 5,000.00  |
| 29. Machinery, fixtures, equipment, and supplies used in business. | 3 Shirt Press, DTG (Digital Transfer to Garment), Mug Press, Hat Press, Vinyl Cutter, Brother Single Head Embroidery Machine, SWF Two Head Embroidery Machine, 3 Computers, 2 Printers, Steamer, 42" TV, Small Fridge - Subject to lien by Northwestern Bank | J | 17,000.00 |

Sheet 2 of 3 continuation sheets attached to the Schedule of Personal Property



B6B (Official Form 6B) (12/07) - Cont.

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Lorelle Lea Carr**

Case No. \_\_\_\_\_

Debtors

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30. Inventory.		1000 Blank Shirts - Subject to lien by Northwestern Bank	J	2,000.00
		150 Blank Polo Shirts - Subject to lien by Northwestern Bank	J	1,875.00
		Miscellaneous Other Inventory - Subject to lien by Northwestern Bank	J	2,000.00

Customer Lists

Intangible Business Property